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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 381

AMERICAN PRESIDENT LINES, LIMITED, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the court below (R. 17) is not yet reported.

JURISDICTION

The judgment of the court below was entered on July 9, 1952 (R. 17). The petition for a writ of certiorari was filed on September 6, 1952. The jurisdiction of the court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the validity of certain regulations promulgated by the Immigration and Naturalization Service is directly reviewable in a United States Court of Appeals.

STATUTE INVOLVED

Section 10 of the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1009) provides in part as follows:

> Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—
>
> (a) RIGHT OF REVIEW.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.
>
> (b) FORM AND VENUE OF ACTION.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.
>
> * * *

STATEMENT

Petitioner initiated this proceeding on June 9, 1952 by filing in the United States Court of Appeals for the District of Columbia a petition for judicial review of certain regulations, promulgated by the Immigration and Naturalization Service, Department of Justice (R. 1-10). The Court of Appeals dismissed the petition for want of jurisdiction (R. 17).

In December, 1951, the Immigration and Naturalization Service published in the Federal Register (16 F. R. 12572) proposed rules relating to the payment of detention expenses of passengers carried by shipping companies. Petitioner and others filed written protests to the proposed rules. After an oral hearing on these protests, the proposed rules and regulations were approved without substantial changes by the Acting Attorney General on May 7, 1952, and published in the Federal Register on May 14, 1952 (17 F.R. 4373-4374). It is the validity of these regulations which petitioner unsuccessfully sought to have reviewed in the court below.[1] (R. 7-8.)

ARGUMENT

Petitioner's sole contention (Pet. 3-4) is that Section 10 of the Administrative Procedure Act confers jurisdiction upon the courts of appeal to review the validity of the rules and regulations described in the Statement. The question is not

[1] Petitioner is challenging the validity of the same regulations in a case pending in the Court of Claims, *American President Lines* v. *United States*, No. 50,399 commenced October 2, 1951, and now on the calendar (R. 11).

whether review is available under Section 10, but merely whether a proceeding to review may in the first instance be brought in a Court of Appeals.

The court below was clearly correct in holding that it had no original jurisdiction in this cause. There is no statute conferring jurisdiction upon courts of appeal to review the administrative action here involved, and it is well established that the courts of appeals have no original jurisdiction except that specifically conferred by statute. See *American Federation of Labor* v. *National Labor Relations Board,* 308 U.S. 401; *United States* v. *Agne,* 161 F. 2d 331 (C.A. 3).

A petition to review an administrative determination is clearly an original suit which cannot be initiated in a Court of Appeals without specific statutory authorization. Section 10 of the Administrative Procedure Act does not confer upon courts of appeal original jurisdiction to review administrative action where Congress has not specifically done so in another statute. *City of Dallas, Texas* v. *Rentzel,* 172 F. 2d 122 (C.A. 5), certiorari denied, 338 U.S. 858. See also *Blackmar* v. *Guerre,* 342 U.S. 512, 516. The *City of Dallas* decision is not, as petitioner claims, in conflict with the decision in *United States* v. *Carusi,* 166 F. 2d 457 (C.A. 3) for in the *Carusi* case the action was originally brought in the district court and the appellate court was dealing with the question of whether the district court had jurisdiction to review the action under Section 10. That issue is not involved in this case in its present posture.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER, 1952.

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